

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

|                     |   |                        |
|---------------------|---|------------------------|
| ANGEES BURRELL,     | ) | No. C 08-0846 JSW (PR) |
|                     | ) |                        |
| Petitioner,         | ) |                        |
|                     | ) | <b>ORDER DENYING</b>   |
| vs.                 | ) | <b>CERTIFICATE OF</b>  |
|                     | ) | <b>APPEALABILITY</b>   |
| M.S. EVANS, Warden, | ) |                        |
|                     | ) | <b>(Docket no. 13)</b> |
| Respondent.         | ) |                        |

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Petitioner, a prisoner of the State of California, filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254 . In an order dated March 18, 2009, this Court dismissed the petition as procedurally barred (docket no. 11). Petitioner has filed a notice of appeal (docket no. 13).

Upon the filing of a notice of appeal and a request for a COA, the district court shall indicate which specific issue or issues satisfy the standard for issuing a certificate, or state its reasons why a certificate should not be granted. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(3)). If no express request is made for a COA, the notice of appeal shall be deemed to constitute a request for a certificate. *See id.*

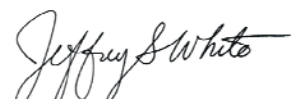
A judge shall grant a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court’s procedural holding.” *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

1 “When the district court denies a habeas petition on procedural grounds without reaching  
2 the prisoner’s underlying constitutional claim, a COA should issue when the prisoner  
3 shows, at least, that jurists of reason would find it debatable whether the petition states a  
4 valid claim of the denial of a constitutional right and that jurists of reason would find it  
5 debatable whether the district court was correct in its procedural ruling.” *Id.* at 484; *see*  
6 *James v. Giles*, 221 F.3d 1074, 1077 (9th Cir. 2000). As each of these components is a  
7 “threshold inquiry,” the federal court “may find that it can dispose of the application in a  
8 fair and prompt manner if it proceeds first to resolve the issue whose answer is more  
9 apparent from the record and arguments.” *Slack*, 529 U.S. at 485. Supreme Court  
10 jurisprudence “allows and encourages” federal courts to first resolve the procedural  
11 issue. *See id.*

12 Petitioner has not established that “jurists of reason would find it debatable  
13 whether the district court was correct in its procedural ruling.” *Id.* at 484. Accordingly,  
14 the request for a certificate of appealability is DENIED (docket no. 13). The Clerk of  
15 Court shall forward this order, along with the case file, to the United States Court of  
16 Appeals for the Ninth Circuit. *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.  
17 1997).

18 IT IS SO ORDERED.

19 DATED: May 26, 2009

20   
21 JEFFREY S. WHITE  
22 United States District Judge  
23  
24  
25  
26  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5  
6 ANGEE BURRELL,

7 Plaintiff,

8 v.

9 M S EVANS et al,

10 Defendant.  
11 \_\_\_\_\_/

Case Number: CV08-00846 JSW


**CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on May 26, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
17 receptacle located in the Clerk's office.

18 Angee Burrell T-48872  
19 Salinas Valley State Prison  
20 P.O. Box 1050  
21 Soledad, CA 93960

22 Dated: May 26, 2009

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk